No. 816

In the Supreme Court of the United States

OCTOBER TERM, 1960

CHARLES R. GODDARD, ET AL., PETITIONERS

v.

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY AND THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY AND THE UNITED STATES IN OPPOSITION

ARCHIBALD COX,
Solicitor General,

ROGER P. MARQUIS,
ROBERT S. GRISWOLD, JR.,
Attorneys,
Department of Justice, Washington 25, D.C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	1
Statutes involved	2
Statement	2
Argument	3
Conclusion	6

CITATIONS

Cases:	
Berman v. *Parker*, 348 U.S. 26	3, 5
Dalehite v. *United States*, 346 U.S. 15	4
Indian Towing Co. v. *United States*, 350 U.S. 61	4
Parcel 5099 v. *District of Columbia, Redevelopment Land Agency*, 274 F. 2d 753	2, 5
Wickman v. *Inland Waterways Corp.*, 78 F. Supp. 284	5
Constitution and statutes:	
United States Constitution, Fifth Amendment	3, 5
Federal Tort Claims Act:	
28 U.S.C. 1346(b)	2
28 U.S.C. 2671	4
28 U.S.C. 2679	2, 4
28 U.S.C. 2680(a), (h)	2, 4
D.C. Code (1951) 5–701, *et seq*	3, 5

590917—61

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 816

CHARLES R. GODDARD, ET AL., PETITIONERS

v.

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY AND THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY AND THE UNITED STATES IN OPPOSITION

OPINION BELOW

The district court did not write an opinion. The opinion of the court of appeals (Pet. App. 33–37) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on January 12, 1961. The petition for a writ of certiorari was filed on March 16, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether an owner of land can recover in a proceeding based on tort against the District of Columbia

Redevelopment Land Agency and the United States for alleged misrepresentations and delays in condemnation proceedings or is limited to recovery for the fair value of his rights in the condemnation proceedings.

STATUTES INVOLVED

Pertinent portions of the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2679, 2680 (a) and (h), are set out in the appendix to the petition, pp. 45–46.

STATEMENT

The petitioners severally owned six parcels of land within Project Area C under the Southwest Redevelopment plan in the District of Columbia. Petitioner Mills, in addition to a parcel owned by him, also owned a laundromat business situated upon one of the other parcels. As to one of the properties owned by petitioner Goddard, just compensation was awarded as a result of a jury trial and the judgment was affirmed by the court of appeals. *Parcel 5099* v. *District of Columbia, Redevelopment Land Agency*, 274 F. 2d 753 (C.A. D.C.). Of the other five parcels one was purchased outright, the compensation for three was settled after condemnation proceedings were commenced, and proceedings to establish just compensation for the remaining parcel are now pending in the district court.

In February, 1960, the petitioners filed a Complaint for Damages for Tortious Action against the District of Columbia Redevelopment Land Agency (hereinafter referred to as "R.L.A."). The complaint sets forth two causes of action alleging that officials of R.L.A. misrepresented to petitioner Mills, in or about

1956, "that the defendant's [R.L.A.'s] operations in the area would help the Mills Laundromat business." In the second cause of action, the petitioners alleged that R.L.A. "unduly delayed the institution and prosecution of condemnation proceedings for the acquisition" of properties owned by the petitioners. The result, the complaint alleged, was that the Agency acquired the properties at a price less than the just compensation provided in the Fifth Amendment. Damages were sought totaling $102,721. In April, 1960, a complaint based on identical claims was filed against the United States.

The United States Attorney, appearing for both the United States and R.L.A., moved to dismiss both complaints for lack of jurisdiction and failure to state a claim upon which relief could be granted. Each case was dismissed for lack of jurisdiction by a different judge of the district court. The court of appeals affirmed the dismissals and this petition followed.

ARGUMENT

The functions and powers of R.L.A. were before this Court in *Berman* v. *Parker*, 348 U.S. 26. The Agency was established by Congress (D.C. Code (1951), 5–701, *et seq.*) to eliminate substandard housing conditions and blighted areas in Washington, D.C., and to further the redevelopment of blighted territory in the District of Columbia by acquiring real property in its own name by purchase and condemnation. Pursuant to this objective, procedures were set forth in the statute which provided for the preparation and adoption by the proper authorities of a comprehensive

redevelopment plan. The Act provided that after formal adoption of such a plan and forwarding of certification to the Agency, R.L.A. "shall proceed" to acquire the lands involved. Upon such certification the statute provided, also, that no new construction was to be authorized and no substantial remodeling beyond ordinary maintenance undertaken.

1. The waiver of immunity in the Tort Claims Act, 28 U.S.C. 2671, *et seq.*, excepts claims for negligent performance of a discretionary function (28 U.S.C. 2680(a)) where the discretion is on a "planning," as opposed to an "operational," level. *Dalehite* v. *United States,* 346 U.S. 15; *Indian Towing Co.* v. *United States,* 350 U.S. 61. The selection of properties for a redevelopment project and the time for their condemnation is discretionary action within the meaning of this Court's interpretation of the Tort Claims Act. As for the alleged misrepresentation, claims on that basis are also specifically excepted from the Act: 28 U.S.C. 2680(h). The decision of the court below is, therefore, in accord with established principles of law.

Nor may the petitioners proceed independently against the Agency under the "sue and be sued" clause contained in its statutory charter. Section 2679 of the Tort Claims Act provides that the exclusive remedy for actions based on torts of agencies of the United States, or their employees within the scope of their official duties, shall be brought under the Act against the United States. The fact that the petitioners' specific causes of action are excepted from the remedies provided by the Act does not mean that Congress intended to authorize a claimant to

proceed directly against the agency when it is not permitted to do so against the United States. *Wickman* v. *Inland Waterways Corp.*, 78 F. Supp. 284, 285–287 (D. Minn.).[1]

2. The petitioners have not been denied their right to just compensation under the Fifth Amendment to the Constitution. Of the six parcels involved in this case, valuation of at least one of the parcels has been fixed in condemnation proceedings for the specific purpose of establishing just compensation. An appeal was taken by the owner, petitioner Goddard in this case, to the United States Court of Appeals for the District of Columbia Circuit. *Parcel 5099* v. *District of Columbia, Redevelopment Land Agency*, 274 F. 2d 753. In that appeal, petitioner Goddard presented for the court's consideration the following question, among others:

> 4. Did the delays between the announcement of the taking of appellant's property for the Slum Clearance project involved and the viewing of the property by the condemnation jury, when considered with the mandatory provisions of the slum clearance act and the damage done by the taking, result in a violation of the due process and just compensation provisions of the Constitution?

The basic question presented to the court of appeals in the present case is virtually identical:

[1] The decision of the court below that R.L.A. is a federal agency and therefore covered by the Tort Claims Act is based on a reasonable construction of the statute (D.C. Code (1951) 5-701) including the specific provision that redevelopment of the nation's capital is "the policy of the United States." This is in accord with this Court's decision in *Berman* v. *Parker*, 348 U.S. 26.

1. Did the actions of the District of Columbia Redevelopment Land Agency violate the Fifth Amendment to the Constitution of the United States?

* * * *

11. Where there is such undue delay is there a violation of the due process clause of the Constitution?

The sole objective of the earlier proceeding was to establish just compensation. It is *res judicata* of the rights he now asserts in the attempt to transform the action into a suit sounding in tort. Moreover, it demonstrates, as well, that condemnation is the proper remedy for all the petitioners here and is the exclusive remedy to establish just compensation for the taking of their properties.

The extent of the duty owed the petitioners by the United States is the payment of just compensation for the taking of their property. That duty is discharged in the condemnation proceeding. Nothing more could be served by a suit for negligence in a tort action seeking the identical relief.

CONCLUSION

The ruling below is correct. There is no conflict or question calling for review by this Court. It is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.
ROGER P. MARQUIS,
ROBERT S. GRISWOLD, JR.,
Attorneys.

APRIL 1961

U.S. GOVERNMENT PRINTING OFFICE: 1961